

REMARKS

Claims 1-5, 7, 8, 15-17, 21, 23, 25, 26 and 29-32 are currently pending in this application. Applicants have carefully reviewed the Office Action and respectfully request reconsideration of the claims in view of the remarks presented below.

Statement Regarding Common Ownership or Obligation of Assignment

David Sarisky, an attorney of record for the present U.S. Patent Application 10/656,540 ("the `540 application"), states that the `540 application and U.S. Patent No. 7,092,755 (Florio `755), were at the time the invention of the `540 application was made, owned by Pacesetter, Inc. or subject to an obligation of assignment to Pacesetter, Inc.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 2, 4, 5, 15-17, 21, 23, 26, 31 and 32 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 4,712,555 (Thornander) in view of U.S. Patent No. 7,092,755 (Florio `755).

Florio `755 published as an issued patent on August 15, 2006 and as a patent publication on September 23, 2004, each of which is after the effective date of the present application, September 9, 2003. As such Florio `755 is prior art under 35 U.S.C. §102(e).

Without addressing the merits of the rejection of claims 1, 2, 4, 5, 15-17, 21, 23, 26, 31 and 32, in accordance with the American Inventors Protection Act, Florio `755 does not qualify as prior art under 35 U.S.C. §103(a) via 35 U.S.C. §102(e) because the `540 application was filed on or after November 29, 1999 and the subject matter of Florio `755 and pending claims 1, 2, 4, 5, 15-17, 21, 23, 26, 31 and 32 were, at the time the invention was made, owned by or subject to an obligation of assignment to the same organization (see above "Statement Regarding Common Ownership or Obligation of Assignment"). In view of the foregoing, Applicants request withdrawal of the §103

rejections of claims 1, 2, 4, 5, 15-17, 21, 23, 26, 31 and 32 over Thornander and Florio `755.

Claim 3 was rejected under 35 U.S.C. §103 as being unpatentable over Thornander in view of Applicant's admitted prior art (Admission). Claims 29 and 30 were rejected under 35 U.S.C. §103 as being unpatentable over Thornander in view of Florio and further in view of U.S. Patent Publication 2005/0119711 (Cho `711).

In view of the foregoing regarding the rejection of independent claim 1 in view of Thornander and Florio `755, Applicants believes that the rejections of claim 3, 29 and 30 under §103 are moot as these dependent claims depend from allowable independent base claim 1.

Claims 15, 16, 21, 23 and 26 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,919,210 (Lurie) in view of Florio `755.

Without addressing the merits of the rejection of claims 15, 16, 21, 23 and 26, in accordance with the American Inventors Protection Act, Florio `755 does not qualify as prior art under 35 U.S.C. §103(a) via 35 U.S.C. §102(e) because the `540 application was filed on or after November 29, 1999 and the subject matter of Florio `755 and pending claims 1, 2, 4, 5, 15-17, 21, 23, 26, 31 and 32 were, at the time the invention was made, owned by or subject to an obligation of assignment to the same organization (see above "Statement Regarding Common Ownership or Obligation of Assignment"). In view of the foregoing, Applicants request withdrawal of the §103 rejections of claims 15, 16, 21, 23 and 26 over Lurie and Florio `755.

Allowable Subject Matter

Claims 7, 8 and 25 were allowed.


CONCLUSION

Applicants have made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicants' claims 1-6, 7, 8, 15-17, 21, 23, 25, 26 and 29-32 is believed to be in order.

Respectfully submitted,

Date

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